



UNITED STATES PATENT AND TRADEMARK OFFICE

Paper No. 12

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Director's Office  
Office of Patent Publication

In re Application of :  
John R. Shutt, et al. :  
Application No. 09/056,289 :  
Filed: April 7, 1998 :  
Attorney Docket No. 98B017/2 :

DECISION ON PETITION

This is a decision on the Petition To Withdraw Holding Of Abandonment, received in the United States Patent and Trademark Office (USPTO) on March 24, 2004.

The petition is **DISMISSED**.

The application was held abandoned for failure to timely pay the required issue fee within the statutory period of three months from the mailing of the Notice of Allowance. Accordingly, the Notice of Abandonment was mailed on October 2, 2000.

Unfortunately, the holding of abandonment cannot be withdrawn at this time due to the applicant failure to comply with the requirement under 37 CFR 1.181(f), which states:

The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable.

MPEP 711.03(c) I Petition To Withdraw Holding Of Abandonment states in part:

37 CFR 1.181(f) provides that, *inter alia*, except as otherwise provided, any petition not filed within 2 months from the action complained of may be dismissed untimely. Therefore, any petition (under 37 CFR 1.181) to withdraw holding of abandonment not filed within 2 months of the mail date of a notice of abandonment (the action complained of) may be dismissed as untimely.

Applicant should seek relief by filing a Petition for Revival of Abandoned Application under CFR § 1.137 (a) or (b). The new rule change appears in 62 Federal Regulations, October 10, 1997 or 1203 of the Official Gazette 63, October 21, 1997, 65 FR 57057, Sept. 20, 2000.

- Under 37 CFR 1.137(a), a petition for the revival of an *unavoidably* abandoned application must be accompanied by the following:

- (1) The required reply to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee set forth in § 1.17(l);
- (3) A showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable:  
and
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d) required pursuant to paragraph (c) of this section.

- Under 37 CFR 1.137(b), a petition for the revival of an *unintentionally* abandoned application must be accompanied by the following:

- (1) The required reply to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional;
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d) required pursuant to paragraph (c) of this section.

Further correspondence or inquires with respect to filing a Petition For Revival Under 37 CFR 1.137 should be directed to the Office of Petitions at 703-305-9282 or 9283 or as follows:

*By mail:*                      Mail Stop Petitions  
   Commissioner for Patents  
   P O Box 1450  
   Alexandria, VA 22313-1450

Telephone inquires concerning this decision should be directed to the undersigned at 703-305-8380.

*Thomas E. Hawkins*

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